

## **Senate Bill No. 624**

### **CHAPTER 653**

An act to amend Sections 22951, 22952, 22953, 22957, and 22958 of, and to add Section 22950.5 to, the Business and Professions Code, relating to tobacco.

[Approved by Governor October 13, 2007. Filed with  
Secretary of State October 13, 2007.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

SB 624, Padilla. Tobacco products: minors.

(1) The Stop Tobacco Access to Kids Enforcement (STAKE) Act is designed to reduce the availability of tobacco products to minors through sales restrictions and enforcement activities. The act, among other things, prohibits the furnishing of tobacco products to, and the purchase of tobacco products by, a person under the age of 18 years, and authorizes the assessment of civil penalties for violations of the act. Certain violations of the act are a criminal offense.

The STAKE Act requires the State Department of Health Services to take primary responsibility for enforcement of the act. The act requires the department to conduct random, onsite sting inspections at retail sites, and requires the department to enlist the assistance of persons who are 15 and 16 years of age for this purpose. The act requires the department to adopt and publish guidelines for the use of persons under 18 years of age in inspections.

This bill would make changes to the requirements for guideline provisions, including, but not limited to, provisions relating to authorized state and local enforcement agencies.

(2) The act requires funds collected as civil penalties under the act, up to \$300,000 per year, to be deposited in the State Treasury to the credit of the Sale of Tobacco to Minors Control Account to be expended for purposes of the act upon appropriation by the Legislature. The act requires funds collected in one year that exceed \$300,000 to be deposited in the General Fund.

This bill would require all moneys collected as civil penalties under the act by the department and other state agencies to be deposited into the account, and would delete the requirement that the funds in excess of \$300,000 per year be deposited in the General Fund.

(3) Existing law authorizes the department to enter into an agreement with a local law enforcement agency for the enforcement of the act within the agency's local jurisdiction. The act requires the department to reimburse local law enforcement agencies for enforcement costs pursuant to an agreement from the Sale of Tobacco to Minors Control Account and requires

the department to coordinate with local law enforcement agencies any state enforcement in those jurisdictions.

This bill would delete those provisions and would, instead, specifically authorize an enforcing agency, as defined, other than the department, to conduct inspections and assess penalties for violations of the act if the enforcing agency complies with the act and with all applicable laws and guidelines. The bill would encourage state and local enforcement agencies to coordinate with the department.

(4) Existing law authorizes the department to assess civil penalties against any person, firm, or corporation that sells, gives, or in any way furnishes to another person who is under the age of 18 years, tobacco related products.

This bill would make changes to the civil penalty amounts for the first and second violations of that provision and would authorize, not only the department, but also any enforcing agency, to assess those civil penalties.

*The people of the State of California do enact as follows:*

SECTION 1. Section 22950.5 is added to the Business and Professions Code, to read:

22950.5. For purposes of this division, the following terms have the following meanings:

(a) "Department" means the State Department of Public Health.

(b) "Enforcing agency" means the State Department of Public Health, another state agency, including, but not limited to, the office of the Attorney General, or a local law enforcement agency, including, but not limited to, a city attorney, district attorney, or county counsel.

SEC. 2. Section 22951 of the Business and Professions Code is amended to read:

22951. The Legislature finds and declares that reducing and eventually eliminating the illegal purchase and consumption of tobacco products by minors is critical to ensuring the long-term health of our state's citizens. Accordingly, California must fully comply with federal regulations, particularly the "Synar Amendment," that restrict tobacco sales to minors and require states to vigorously enforce their laws prohibiting the sale and distribution of tobacco products to persons under 18 years of age. Full compliance and vigorous enforcement of the "Synar Amendment" requires the collaboration of multiple state and local agencies that license, inspect, or otherwise conduct business with retailers, distributors, or wholesalers that sell tobacco.

SEC. 3. Section 22952 of the Business and Professions Code is amended to read:

22952. On or before July 1, 1995, the State Department of Public Health shall do all of the following:

(a) Establish and develop a program to reduce the availability of tobacco products to persons under 18 years of age through the enforcement activities authorized by this division.

(b) Establish requirements that retailers of tobacco products post conspicuously, at each point of purchase, a notice stating that selling tobacco products to anyone under 18 years of age is illegal and subject to penalties. The notice shall also state that the law requires that all persons selling tobacco products check the identification of a purchaser of tobacco products who reasonably appears to be under 18 years of age. The warning signs shall include a toll-free telephone number to the department for persons to report unlawful sales of tobacco products to minors.

(c) Provide that primary responsibility for enforcement of this division shall be with the department. In carrying out its enforcement responsibilities, the department shall conduct random, onsite sting inspections at retail sites and shall enlist the assistance of persons that are 15 and 16 years of age in conducting these enforcement activities. The department may conduct onsite sting inspections in response to public complaints or at retail sites where violations have previously occurred, and investigate illegal sales of tobacco products to minors by telephone, mail, or the Internet. Participation in these enforcement activities by a person under 18 years of age does not constitute a violation of subdivision (b) of Section 308 of the Penal Code for the person under 18 years of age, and the person under 18 years of age is immune from prosecution thereunder, or under any other provision of law prohibiting the purchase of these products by a person under 18 years of age.

(d) In accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department shall adopt and publish guidelines for the use of persons under 18 years of age in inspections conducted pursuant to subdivision (c) that shall include, but not be limited to, all of the following:

(1) An enforcing agency may use persons under 18 years of age who are 15 or 16 years of age in random inspections to determine if sales of cigarettes or other tobacco products are being made to persons under 18 years of age.

(2) A photograph or video recording of the person under 18 years of age shall be taken prior to each inspection or shift of inspections and retained by the enforcing agency for purposes of verifying appearances.

(3) An enforcing agency may use video recording equipment when conducting the inspections to record and document illegal sales or attempted sales.

(4) The person under 18 years of age, if questioned about his or her age, need not state his or her actual age but shall present a true and correct identification if verbally asked to present it. Any failure on the part of the person under 18 years of age to provide true and correct identification, if verbally asked for it, shall be a defense to an action pursuant to this section.

(5) The person under 18 years of age shall be under the supervision of a regularly employed peace officer during the inspection.

(6) All persons under 18 years of age used in this manner by an enforcing agency shall display the appearance of a person under 18 years of age. It shall be a defense to an action under this division that the person's appearance was not that which could be generally expected of a person

under 18 years of age, under the actual circumstances presented to the seller of the cigarettes or other tobacco products at the time of the alleged offense.

(7) Following the completion of the sale, the peace officer accompanying the person under 18 years of age shall reenter the retail establishment and shall inform the seller of the random inspection. Following an attempted sale, the enforcing agency shall notify the retail establishment of the inspection.

(8) Failure to comply with the procedures set forth in this subdivision shall be a defense to an action brought pursuant to this section.

(e) Be responsible for ensuring and reporting the state's compliance with Section 1926 of Title XIX of the federal Public Health Service Act (42 U.S.C. Sec. 300x-26) and any implementing regulations adopted in relation thereto by the United States Department of Health and Human Services. A copy of this report shall be made available to the Governor and the Legislature.

(f) Provide that any civil penalties imposed pursuant to Section 22958 shall be enforced against the owner or owners of the retail business and not the employees of the business.

SEC. 4. Section 22953 of the Business and Professions Code is amended to read:

22953. All moneys collected as civil penalties by the department and other state agencies pursuant to this division shall be deposited in the State Treasury to the credit of the Sale of Tobacco to Minors Control Account that is hereby established.

SEC. 5. Section 22957 of the Business and Professions Code is amended to read:

22957. (a) In addition to the primary enforcement responsibility assumed by the department, another enforcing agency may conduct inspections and assess penalties for violations of this division if the enforcing agency complies with this division and with all applicable laws and guidelines developed pursuant to this division.

(b) State and local enforcement agencies are encouraged, in order to avoid duplication, to share the results of inspections and coordinate with the department when enforcing this division.

SEC. 6. Section 22958 of the Business and Professions Code is amended to read:

22958. (a) An enforcing agency may assess civil penalties against any person, firm, or corporation that sells, gives, or in any way furnishes to another person who is under the age of 18 years, any tobacco, cigarette, cigarette papers, any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or any controlled substance, according to the following schedule: (1) a civil penalty of from four hundred dollars (\$400) to six hundred dollars (\$600) for the first violation, (2) a civil penalty of from nine hundred dollars (\$900) to one thousand dollars (\$1,000) for the second violation within a five-year period, (3) a civil penalty of from one thousand two hundred dollars (\$1,200) to one thousand eight hundred dollars (\$1,800) for a third violation within

a five-year period, (4) a civil penalty of from three thousand dollars (\$3,000) to four thousand dollars (\$4,000) for a fourth violation within a five-year period, or (5) a civil penalty of from five thousand dollars (\$5,000) to six thousand dollars (\$6,000) for a fifth or subsequent violation within a five-year period.

(b) The enforcing agency shall assess penalties in accordance with the schedule set forth in subdivision (a) against a person, firm, or corporation that sells, offers for sale, or distributes tobacco products from a cigarette or tobacco products vending machine, or a person, firm, or corporation that leases, furnishes, or services these machines in violation of Section 22960.

(c) An enforcing agency may assess civil penalties against a person, firm, or corporation that sells or deals in tobacco or any preparation thereof, and fails to post conspicuously and keep posted in the place of business at each point of purchase the notice required pursuant to subdivision (b) of Section 22952. The civil penalty shall be in the amount of two hundred dollars (\$200) for the first offense and five hundred dollars (\$500) for each additional violation.

(d) An enforcing agency shall assess penalties in accordance with the schedule set forth in subdivision (a) against a person, firm, or corporation that advertises or causes to be advertised a tobacco product on an outdoor billboard in violation of Section 22961.

(e) If a civil penalty has been assessed pursuant to this section against a person, firm, or corporation for a single, specific violation of this division, the person, firm, or corporation shall not be prosecuted under Section 308 of the Penal Code for a violation based on the same facts or specific incident for which the civil penalty was assessed. If a person, firm, or corporation has been prosecuted for a single, specific violation of Section 308 of the Penal Code, the person, firm, or corporation shall not be assessed a civil penalty under this section based on the same facts or specific incident upon which the prosecution under Section 308 of the Penal Code was based.

(f) (1) In the case of a corporation or business with more than one retail location, to determine the number of accumulated violations for purposes of the penalty schedule set forth in subdivision (a), violations of this division by one retail location shall not be accumulated against other retail locations of that same corporation or business.

(2) In the case of a retail location that operates pursuant to a franchise as defined in Section 20001, violations of this division accumulated and assessed against a prior owner of a single franchise location shall not be accumulated against a new owner of the same single franchise location for purposes of the penalty schedule set forth in subdivision (a).

(g) Proceedings under this section shall be conducted in accordance with Section 100171 of the Health and Safety Code, except in cases where a civil penalty is assessed by an enforcing agency other than the department, in which case, proceedings shall be conducted in accordance with the procedures of that agency that are consistent with Section 22957.

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